IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date :18.09.2006

Coram

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE P.P.S.JANARTHANA RAJA

WRIT APPEAL No. 496 of 2003

Tamil nadu Housing Board
rep.by its Managing Director
331, Anna Salai, Nandanam
Chennai-35. ..Appellant

-Vs.-

1. Sembanna Gounder

2. manickam

3. Minor M. Elango

4. Minor M. Baskar
Minors 3 and 4 rep.by their father
and next friend Manickam.

5. State of Tamil Nadu rep.by its
Secretary, Housing and Urban
Development Department
Fort St. George
Madras-9.

6. The Special Tahsildar
Land Acquisition
Neighbourhood Scheme of Salem
Ayyan Thirumaligai
Salem-8. ..Respondents

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Writ appeal against the order dated 3.11.2000 passed in W.P.No.13943 of 1992.

For Appellant : Mr.K.Chelladurai
for TNHB

For Respondents : Mr.N.R.Elango, Senior Counsel
for Mr.V.Srinivasan for RR 2 to 4.

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J U D G M E N T

(Judgment of the Court was delivered by
R. Balasubramanian, J)

Mr.N.R.Chandran, learned Senior Counsel appearing for respondents 2 to 4 raised a preliminary objection on the maintainability of the writ appeal. The objection is, by the order impugned in the writ appeal, a learned Single Judge of this Court quashed the declaration issued under Section 6 of the Land Acquisition Act passed by the State Government. The State Government had not challenged that order of the learned Single Judge. Therefore though the intended acquisition is for the benefit of the Tamil Nadu Housing Board, they have no right to challenge the order of the learned Single Judge. We asked Mr.K.Chelladurai, learned counsel appearing for the appellant as to whether the Housing Board has any role to play at any stage before possession of the acquired lands are handed over to the Tamil Nadu Housing Board. Learned counsel fairly stated that the Tamil Nadu Housing Board has no role to play at all and possession was never handed over to the Housing Board and no award was also passed. However learned counsel would submit that since the acquisition is for the benefit of the Tamil Nadu Housing Board, they have a right to file the appeal.

2. We gave our careful consideration to the submissions made by Mr.N.R.Chandran, learned Senior Counsel for respondents 2 to 4 on the maintainability of the writ appeal and the submission made by Mr.K.Chelladurai in meeting those objections. Under the Land Acquisition Act "Appropriate Government" is defined under Section 3 (ee) as hereunder:-

> "Appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

Under Section 4 of the Land Acquisition Act the "Appropriate Government" - as defined under Section 3(ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands exercising their power of eminent domain. The Housing Board has no interest, what so ever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and the Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the writ petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge,

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having regard to the stage at which the writ petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for respondents 2 to 4 is sustained and the appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the writ appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs.

Tr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   State of Tamil Nadu
   Housing and Urban
   Development Department
   Fort St. George
   Madras-9.

2. The Special Tahsildar
   Land Acquisition
   Neighbourhood Scheme of Salem
   Ayyan Thirumaligai
   Salem-8.

3. The Managing Director
   Tamil nadu Housing Board
   331, Anna Salai, Nandanam
   Chennai.

+ 1 cc to Mr. K. Chelladurai, Advocate SR No. 43825
+ 1 cc to M/s. V. Srinivasan, Advocate SR No. 43751
+ 1 cc to the Government Pleader SR No. 43662

W.A.No.496 of 2003

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SR/25.9.2006

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